

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION

UNITED STATES OF AMERICA PLAINTIFF  
VERSUS CIVIL ACTION NO. 3:22-cv-686-HTW-LGI  
THE CITY OF JACKSON, MISSISSIPPI DEFENDANTS

STATUS CONFERENCE  
BEFORE THE HONORABLE HENRY T. WINGATE,  
UNITED STATES DISTRICT COURT JUDGE,  
MAY 9, 2023,  
JACKSON, MISSISSIPPI

(APPEARANCES NOTED HEREIN.)

REPORTED BY:

CAROLINE MORGAN, CCR #1957  
OFFICIAL COURT REPORTER  
501 E. Court Street, Suite 2.500  
Jackson, Mississippi 39201  
Telephone: (601) 608-4188  
E-mail: Caroline\_Morgan@mssd.uscourts.gov

1 APPEARANCES:

2

3 FOR THE PLAINTIFF: ANGELA GIVENS WILLIAMS, ESQ.  
4 KARL J. FINGERHOOD, ESQ.  
5 ANGELA MO, ESQ.  
6 CAROL L. KEMKER

7  
8 FOR THE DEFENDANTS: CATORIA PARKER MARTIN, ESQ.  
9 TERRELL WILLIAMSON, ESQ.

10 ALSO PRESENT: GERALD KUCIA  
11 TED HENIFIN  
12 MELISSA WILLIAMSON  
13 CHARLES MCGUFFEY  
14 FRANK CALAMITA  
15 JIM VINCH  
16 SUZANNE RUBINI  
17 SUZANNE ARMOR  
18 LEIF PALMER  
19 BRIAN SMITH  
20 MICHAEL CRESWELL  
21 CHARLOTTE BUNCH  
22 WHITNEY BUHLER  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**TABLE OF CONTENTS**

Style and appearances.....	1
Court Reporter's Certificate.....	80

1                                   **IN OPEN COURT, MAY, 9, 2023**

2

3           THE COURT: Terri, call the case, please.

4           THE COURTROOM DEPUTY: Your Honor, this is United  
5 States of America vs. City of Jackson, Civil Action Number  
6 3:22-cv-686-HTW-LGI.

7           Appearing in the courtroom on behalf of plaintiff is  
8 Angela Williams, Karl Fingerhood. Appearing by Zoom, Angela  
9 Mo, also Carol Kemker from the EPA. Appearing on behalf of  
10 defendants is Attorney Catoria Martin and Terrell  
11 Williamson. For the State of Mississippi, Gerald Kucia.  
12 For the interested party are Melissa Williamson, Charles  
13 McGuffey, and Frank Calamita appearing by Zoom. And  
14 third-party manager, Ted Henifin, is in the courtroom. Also  
15 appearing by Zoom are EPA representatives and  
16 representatives from the Department of Justice.

17           THE COURT: All right. Do you have their names? Why  
18 don't we just call the roll on those various agencies and  
19 let them identify themselves? Okay?

20           THE COURTROOM DEPUTY: Yes, sir.

21           Can we start with EPA? If you can identify yourself  
22 for the record, those parties that are appearing by Zoom.

23           MR. VINCH: Sure. My name is Jim Vinch. I'm an  
24 attorney with the Water Enforcement Division in Washington,  
25 D.C., for the EPA.

1 MS. ARMOR: Good afternoon. This is Suzanne Armor with  
2 EPA Office of Regional Counsel in Atlanta, Georgia.

3 MS. RUBINI: This is Suzanne Rubini, also with the  
4 Office of Regional Counsel in Atlanta, Georgia.

5 MR. PALMER: I'm Leif Palmer. I'm the regional counsel  
6 in EPA ORC in Atlanta.

7 MR. SMITH: Brian Smith, Water Division, EPA Atlanta.

8 MR. CRESWEIL: Michael Creswell, Office of Regional  
9 Counsel in Atlanta.

10 MS. BUNCH: Charlotte Bunch, Drinking Water Inspector  
11 in ECAD in Atlanta.

12 MS. BUHLER: Whitney Buhler (phonetically), Drinking  
13 Water Inspector and Enforcement Officer in EPA Region IV.

14 MS. BARNES: Okay. Are there any representatives from  
15 the DOJ?

16 MS. MO: Yes. This is Angela Mo. I am from DOJ's  
17 Environmental Enforcement Section, appearing on behalf of  
18 EPA.

19 THE COURT: Did we miss anybody? All right. The  
20 answer appears to be no.

21 This is a status conference that was called by the  
22 Court to address a development in this matter concerning  
23 this Court's assumption of the litigation involving the  
24 sewage problem in Jackson.

25 This sewage case originally belonged to Judge Tom S.

1 Lee, and recently he and I had a conference on the sewage  
2 case that he had and the water case that I have. And after  
3 we discussed these two cases, we recognized, along with the  
4 input of our third-party manager, Mr. Ted Henifin, that  
5 these two cases had a lot in common. And inasmuch as this  
6 water case has been proceeding apace in recent days and  
7 weeks, then Judge Lee and I agreed that the sewage case, as  
8 well as the water case, should proceed in unison with each  
9 other.

10 There are a number of factors with counsel that result,  
11 and we will be talking about that shortly. So that's what  
12 brings us here is to get a status report on the sewage case,  
13 as it might need to be paired with the water case.

14 Now, we have documents already in the water case, a  
15 consent order between the parties, or among the parties, and  
16 there is one in the sewage case also that has -- that was  
17 crafted some many years ago.

18 Now the question is -- is whether we need to recraft  
19 the consent order in the sewage case and to marry that case  
20 to the water case so that they can proceed together since  
21 the funding will have some interstices, that the two matters  
22 have some common dilemmas and need to have some common  
23 solutions.

24 So because of these and other such considerations,  
25 Judge Lee and I thought that it's better that one judge, and

1       that being myself because the water case is more developed  
2       at this point, handle both cases. So that's what brings us  
3       here so that we can address these particular matters, and  
4       also get the input of the parties who are already in the  
5       water case and the parties who are joining us in the sewage  
6       case.

7               Now, the two matters up until the time that I put the  
8       two cases together were separate and had different cause  
9       numbers. And -- Terri?

10              THE COURTROOM DEPUTY: Yes, sir?

11              THE COURT: Would you read off these different cause  
12       numbers? Start off with the water case, the style of the  
13       water case, and then after that provide the style of the  
14       sewage case.

15              THE COURTROOM DEPUTY: Okay. The style of the water  
16       case is United States of America vs. City of Jackson. The  
17       Cause Number is 3:22-cv-686.

18              And the style of the sewage case, the Civil Action  
19       Number is 3:12-cr-790 (sic).

20              THE COURT: Okay. So these two cases will now proceed  
21       together. An order has already been submitted by myself  
22       combining these two cases.

23              First of all, inasmuch as this is an order that has  
24       already been filed and should have been, at this juncture,  
25       reviewed by all of the parties, nevertheless, I need to ask

1 whether anyone has any objection to the combination of these  
2 two cases. Does anybody?

3 MR. FINGERHOOD: Your Honor, can I be heard,  
4 respectfully?

5 THE COURT: Yes. And can you go to the podium, please?

6 MR. FINGERHOOD: While I do not have an objection at  
7 this time --

8 THE COURT: Now, I need you to identify yourself.

9 MR. FINGERHOOD: Oh, I'm sorry, Your Honor.

10 THE COURT: And your agency.

11 MR. FINGERHOOD: Karl Fingerhood with the U.S.  
12 Department of Justice, and --

13 THE COURT: Okay. Is the green light on?

14 MR. FINGERGOOD: It is now.

15 THE COURT: Okay. Go ahead.

16 MR. FINGERHOOD: Karl Fingerhood with the U.S.  
17 Department of Justice, Environmental Enforcement Section.

18 I would note that MDEQ is our coplaintiff in the sewage  
19 case, and they are not here in court today. We were advised  
20 that this status conference related to the Safe Drinking  
21 Water Act matter. We did file a joint status report on the  
22 sewer case last Friday, and we did request a status  
23 conference in that matter.

24 And so I would respectfully request that perhaps we  
25 delay discussions of the sewer matter until such time that



1 MDEQ is present, and we also can address the Court's  
2 thoughts about combining the cases.

3 THE COURT: Well, are you telling me that you have some  
4 objections to that?

5 MR. FINGERHOOD: I don't. I think it makes sense, and  
6 I think it certainly makes sense to have both cases before  
7 Your Honor. It's just that because our coplaintiff, MDEQ,  
8 is not here, I think perhaps we should defer these  
9 discussions until a time that they can be present.

10 THE COURT: We will have another status conference.  
11 And so by proceeding today, we actually have no intent to  
12 dishonor your coplaintiff or to ignore your coplaintiff. We  
13 fully recognize that all parties should be present. I don't  
14 know why your coplaintiff was not -- is not present. Are  
15 you saying that your coplaintiff was not notified?

16 MR. FINGERHOOD: Well, the interested party in the Safe  
17 Drinking Water Act matter is the Mississippi State  
18 Department of Health. Under the Clean Water Act, MDEQ has  
19 jurisdiction over the state component of the Clean Water  
20 Act. So it is the State, but it's two different parts of  
21 the State.

22 THE COURT: Okay. But are you saying that you all did  
23 not have notice of this matter?

24 MR. FINGERHOOD: I don't believe that MDEQ was noticed,  
25 because they are not either listed as a plaintiff or an

1 interested party in this proceeding, only in the sewer  
2 proceeding.

3 THE COURT: Okay. Well, we can remedy that in the next  
4 session, because the questions that are going to be posed  
5 today may not have all the solutions that we are seeking  
6 today, and there might be some matters that we put on the  
7 thinking table that might have to be addressed at another  
8 time, after the parties have had a chance to dialogue with  
9 each other and internally with each other. And so there  
10 will be other opportunities for us to go forward. But you  
11 are here, are you not?

12 MR. FINGERHOOD: I am, Your Honor.

13 THE COURT: And you are certainly capable of carrying  
14 back the messages, are you not?

15 MR. FINGERHOOD: I am.

16 THE COURT: And --

17 MR. FINGERHOOD: I just wanted to make sure that our  
18 complaintiff would not in any way be prejudiced, and it  
19 appears the Court has been very clear that they will not be.

20 THE COURT: They will not be. And you, as I said, will  
21 be here, and if something delves into some area that you  
22 think some prejudice might erupt, then I will certainly  
23 expect you to stand and so advise us of that. And then we  
24 will know what to do at that point. Okay?

25 MR. FINGERHOOD: Very good, Your Honor.

1 THE COURT: All right. Thank you for bringing that to  
2 my attention.

3 All right. Next party? Yes?

4 MS. MARTIN: Your Honor, Torri Martin here on behalf of  
5 the City of Jackson.

6 And the City of Jackson has no objection to  
7 consolidating the two matters. We agree with Your Honor  
8 that they should proceed in unison and that they are similar  
9 issues in both matters. And so I just wanted to make it  
10 clear for the record that the City of Jackson has no  
11 objection.

12 THE COURT: Thank you so much for coming forward.

13 Next? Anybody else who wants to come up and announce  
14 either a show of support or wants to announce some  
15 hesitation in going forward? Anybody else?

16 All right. I don't see a whole lot of other people  
17 leaping to their feet, and so I then have to presume then  
18 that we can go ahead and proceed.

19 Now, the first thing I want to do at this juncture, and  
20 this is going to involve the sewage case, because this is  
21 the case that's being consolidated with the water case, and  
22 we pretty much know where we are at this juncture on the  
23 water case.

24 So, counsel, can you tell us where the sewage in  
25 Jackson is at this point? I know I asked you a tall order

1 case that I want you to be able to give me an overview of  
2 the sewage situation in Jackson.

3 MR. FINGERHOOD: Yes, Your Honor. Karl Fingerhood from  
4 the Department of Justice.

5 THE COURT: Mr. Fingerhood, go right ahead.

6 MR. FINGERHOOD: We did file a status report update  
7 this past Friday, and it does indicate that there are a  
8 large number of ongoing sewer overflows. I think it was in  
9 the number of 256.

10 There have been several bypasses of the sewage  
11 treatment plant, so it is a severe problem, something that  
12 we have been working on. And as we indicated in the status  
13 report, we have kind of redirected our attention following  
14 the drinking water emergency to focus back on the sewer  
15 issues that do need to be addressed.

16 THE COURT: Now, I thank you for that status that you  
17 provided to us on last Friday. It was very helpful in  
18 seeing exactly where we are now, because the order that was  
19 governing the progress of litigation on the sewage matter  
20 was entered back in, what, 2013 or 2014?

21 MR. FINGERHOOD: Yes, Your Honor.

22 THE COURT: Okay. And so that was a long time ago.  
23 And since that time -- well, let me ask you, could you go  
24 back to the podium, please?

25 Mr. Fingerhood, since that time that there was this

1 consent order entered, and it had certain goals, as all  
2 consent orders have, and certain metrics to measure how well  
3 those particular matters are being addressed and whether  
4 they are being achieved, would you say that today that the  
5 sewage problem is better or worse than it was at the time  
6 that consent order was entered?

7 MR. FINGERHOOD: Your Honor, I would say it is worse.  
8 And I'm --

9 THE COURT: All right. Now, I want you to explain why  
10 you contend that it's worse. I mean, I read your status,  
11 and in addition, my third-party manager carried me around,  
12 as you know, and we and a number of other people had a  
13 chance to see some sewage problems on that tour. And at  
14 that time, Mr. Henifin was quite informative as to the  
15 number of eruptions around the city that tracked the one  
16 that we were shown out there off of Northside Drive, and  
17 even told that there were more than 250 other such eruptions  
18 around the city where raw sewage is bubbling up from the  
19 ground.

20 And the one that we saw was close to a -- I think a  
21 senior retirement home, which, of course, causes one some  
22 angst when one recognizes that the vicinity of that mishap  
23 is an area that could pose some health hazards to our  
24 senior, senior citizens, and we then recognized what we were  
25 looking at at that point as being a severe problem,

1 especially when one considers the number of such incidents  
2 that dot the landscape of the city of Jackson.

3 So a few moments ago you said that you think that since  
4 the consent decree was entered back in 2013 or 2014, that  
5 the problem has escalated; is that correct?

6 MR. FINGERHOOD: Yes, Your Honor. I think that would  
7 likely be undisputed by any of the parties.

8 THE COURT: Do you have a theory as to why it has  
9 escalated? I mean, what has happened to the sewage  
10 situation, whether with the pipes or any other facility, or  
11 the plant or whatever, which has caused the increase in the  
12 sewage problem in the city of Jackson?

13 Can you speak directly into that microphone, please?

14 MR. FINGERHOOD: Yes, Your Honor. I'm not an engineer,  
15 but I would say my own view of what I've observed is that I  
16 think, not unlike the drinking water situation, there was  
17 underinvestment in the system, lack of routine maintenance  
18 activities, and also financial constraints on the City as  
19 far as being able to pay for the work that was necessary to  
20 comply with the consent decree.

21 THE COURT: Financial constraints. So in your  
22 estimation, what is the basis for this statement that there  
23 were financial constraints?

24 MR. FINGERHOOD: Just the ability to raise the rates  
25 sufficiently to pay for the necessary work. I think the

1 City probably has a better idea of the numbers, but, you  
2 know, they were, you know, hundreds of millions of dollars  
3 of work that needed to be done and still needs to be done.

4 THE COURT: And with this Court's consolidation of the  
5 water case and the sewage case, do you see that the sewage  
6 matter can be addressed in the same type of approach that  
7 the water case is being dealt with at this point?

8 MR. FINGERHOOD: Yes. We have had discussions with  
9 both MDEQ and the City about somehow addressing the consent  
10 decree, which is -- the City has acknowledged they are out  
11 of compliance with, and an alternative mechanism to perhaps  
12 stabilize the system.

13 THE COURT: So how is the City not in compliance?

14 MR. FINGERHOOD: Well, under the consent decree, there  
15 were a number of items that the City was supposed to do, and  
16 as we outlined in the status conference, they've really not  
17 done many of them. They have done some work at an area  
18 called the West Bank Interceptor, but -- and some other  
19 projects that they were required to do.

20 But some of the larger projects were never initiated,  
21 you know, some of the city-wide investigations, et cetera,  
22 that were going to go into the plan to fix the system, and  
23 those were not done as they were anticipated, so now we're  
24 thinking about how we make this situation better.

25 THE COURT: The consent decree in the water case and

1 the consent decree in the sewage case then are worded  
2 differently. Do you see any problem in merging those two  
3 documents?

4 MR. FINGERHOOD: I think it would -- as a legal matter,  
5 to merge them I think would be perhaps a little confusing,  
6 but I think, you know, the -- we were -- I think we would  
7 like to perhaps keep the Drinking Water and Clean Water Act  
8 cases, even though they would be consolidated before Your  
9 Honor, have separate, kind of, governing instruments just  
10 because they're dealing with two different statutes.

11 THE COURT: Do you see any problem with the moneys  
12 allocated for each one being in some sort of common pool?  
13 Do you see that?

14 MR. FINGERHOOD: Well, I think there's legal  
15 restrictions on the way certain of the funds that were  
16 allocated by Congress, the way they can be used. Certain  
17 funds can only be used on the Drinking Water Act side.  
18 Certain funds through the State can be used for the sewer  
19 but for capital improvement projects. So there are several  
20 different legal restrictions on how the funds can be used,  
21 and they do differ between the two statutes.

22 THE COURT: But if we have consent decrees in both and  
23 they are crystal clear as to their intended directions and  
24 restrictions under the pertinent laws that separate the two,  
25 do you see any problem then with the Court handling both at



1 the same time under the consolidation that I have ordered?

2 MR. FINGERHOOD: No. I believe the Court is very well  
3 capable of overseeing both matters.

4 THE COURT: Okay. So that is how I would like to  
5 proceed on this, because I think you agree with me that  
6 there are some intertwined issues here between water and  
7 sewage. Do you agree with that?

8 MR. FINGERHOOD: Yes.

9 THE COURT: And therefore there is a great advantage in  
10 proceeding to handle both of those under some common  
11 directive as much as we can establish one. Would you agree  
12 with that, too?

13 MR. FINGERHOOD: Yes.

14 THE COURT: Okay. Well, just a moment. Don't move. I  
15 had a note here on various matters here that I intended to  
16 mention, but since you had risen this talk about the sewage  
17 matter, I just thought it is just better to go ahead and  
18 mention these particular points and let you then expound on  
19 them.

20 So I had here another note that arguably the system;  
21 that is, relative to the sewage, is worse today after the  
22 City has spent millions of dollars to meet reporting  
23 requirements and conduct studies and write required plans.  
24 Do you agree with that statement?

25 MR. FINGERHOOD: Yes. The City is worse today than --

1 THE COURT: Now, on a scale of one to ten, how would  
2 you quantify that rating of worse than that you just provided?

3 MR. FINGERHOOD: I really can't put a number on it. I  
4 would maybe ask the City. They've been pretty honest, and I  
5 think they would admit, as they did in the status report,  
6 that they acknowledge that there is a number of things that  
7 were required under the consent decree that have not been  
8 done.

9 THE COURT: Okay. Then, finally, on an amendment to  
10 the interim stipulated order, do you see any problems with  
11 developing an amendment to that to bring us up to snuff  
12 today and to carry us forward in the future?

13 MR. FINGERHOOD: Well, I think what the parties had  
14 been discussing would be some sort of amendment or document  
15 that would be in the Clean Water Act case that would be, you  
16 know, kind of -- not combined in the same document as the  
17 Safe Drinking Water Act case but on a parallel track, both  
18 before Your Honor.

19 THE COURT: Seated off immediately to your right, as  
20 you know, is Mr. Ted Henifin. He is the third-party  
21 manager. And he has been our polestar in the water case.  
22 Do you see any problems with him occupying a similar  
23 guidance position in the sewage case since he has the handle  
24 on all of the water concerns and the water concerns are so  
25 intertwined with the sewage matters?

1 MR. FINGERHOOD: Well, he does already have authority  
2 over the WSBA, so I think there is some overlap already that  
3 exists between the water and sewer.

4 THE COURT: So would you have any objections to him  
5 assuming a like position with regard to the sewage case in  
6 that regard?

7 MR. FINGERHOOD: I don't. He may. But, you know,  
8 that's -- I know he -- you know, he has his hands full with  
9 the Drinking Water Act case. So I can't presume to speak  
10 for him. But from a qualifications standpoint, he certainly  
11 has the qualifications.

12 In fact, you know, wastewater was really his main area  
13 of expertise before he became the interim third-party  
14 manager.

15 THE COURT: Right. And we're well aware of that. And,  
16 in fact -- in fact -- one second. In fact -- you're not  
17 finished.

18 In fact, I might add that -- oh, I'll let you talk in  
19 just a second. But, in fact, I might add that when he and I  
20 were going over our progress, where we are, what is  
21 necessary for the future and all, and after we had seen the  
22 sewage problem and been advised that were 250 -- at least  
23 250 more such eruptions around the city, then he was the  
24 first one who suggested that perhaps the two cases ought to  
25 be intertwined because they have so much in common. So I

1 think that he will be on board on that, but I'm going to  
2 confirm that in just a moment.

3 Now, but you would have no problems with him assuming  
4 it if he is willing to take on this extra burden?

5 MR. FINGERHOOD: Yeah. I think we definitely would be  
6 interested in discussing that with him.

7 THE COURT: Okay. Thank you very much.

8 Now, Mr. Henifin, before I go to the City of Jackson,  
9 because I want to hear what the City of Jackson has to say,  
10 but I think now this is the appropriate place to have you  
11 inject.

12 Do you have any problems with taking on this extra  
13 burden?

14 MR. HENIFIN: No, Your Honor. There's plenty of  
15 problems with it, but I think I'm well suited for this  
16 additional work, and I think we've got the systems in place  
17 to make it functional.

18 THE COURT: And I was correct in what I said was that  
19 on our tour, I think it was the first time, that someone  
20 suggested these two cases should be combined. And you were  
21 that person, were you not?

22 MR. HENIFIN: Yes, Your Honor.

23 THE COURT: And could you then explain in some detail  
24 why you made that suggestion?

25 MR. HENIFIN: Yes, Your Honor. It's largely around the

1 financing and the fact that the financial plan that I had to  
2 produce as part of the interim stipulated order on the  
3 drinking water case included development of that financial  
4 plan.

5 And because I have authority over the water and sewer  
6 billing administration, revenues come in together. We  
7 separate those with -- well, it actually all flows to the  
8 City at this point, because we couldn't direct the revenue  
9 away from the City because of some bond covenants related to  
10 the debt the City is carrying on both water and sewer, which  
11 is combined.

12 In fact, they combined revenue into a single water and  
13 sewer revenue for their bond issues many, many years ago.  
14 So the money comes in actually is devoted to the system,  
15 water and sewer. The City, under our terms of our  
16 agreement, pays a million dollars a month into our O & M  
17 fund, the operation and maintenance fund to the water side,  
18 and the balance is used for the City's purposes for the  
19 sewer side, paying the bond debt, the other related costs of  
20 the water and sewer system.

21 So to go forward and really build a financially  
22 sustainable system, we need to retire the debt, and all the  
23 revenue needs to flow to the third party to make sure that  
24 we can allocate revenue accordingly. We mentioned earlier  
25 that we've got a significant amount of Safe Drinking Water

1 Act money available through the benefits of the  
2 Congressional appropriation that was done in December.

3 That 600 million can offset an awful lot of the water  
4 needs, in accordance as Mr. Fingerhood had mentioned. To  
5 follow the statute, that water -- that money can only be  
6 spent in drinking water needs. That means our local  
7 revenue, which is already combined, water and sewer, could  
8 be largely redirected to sewer over some period of time  
9 while we've got the benefit of the federal dollars for  
10 water, which is what makes all this kind of work together.

11 The third point of making it work together on the  
12 finance side is we've got some Corps of Engineer money  
13 through the Water Resource Development Act. That currently  
14 needs a matching fund, and it can be used for water and  
15 sewer, and if we use it for sewer and match it with some of  
16 our water money, we can get more miles of a small-diameter  
17 pipe replacement done at the same time.

18 This all requires some pretty close coordination. I'm  
19 not saying it couldn't be done with two separate people  
20 managing that, but I believe that with the authorities  
21 you've provided in the interim stipulated order, the freedom  
22 to procure faster, to hire faster, to contract quicker will  
23 make this move much faster than the ten years of non, I  
24 guess, advancement in the sewer system that we've just  
25 experienced.

1 I'm convinced that we'll make significant progress in  
2 the very short order under that -- some sort of combined  
3 between the sewer and water using the model that we have  
4 with the interim stipulated order.

5 THE COURT: Now, I want to hear from the City at this  
6 point as to -- hold on, Mr. Henifin. Mr. Henifin, hold on  
7 just a minute. I'm going to hear from -- I'm going to hear  
8 from the City as how the City views all of this. Then I'm  
9 going to come back to you, because you have some more  
10 points, I believe, that you would like to make on this  
11 intertwining between these two systems --

12 MR. HENIFIN: Yes, sir.

13 THE COURT: -- that I'd like to hear enunciated on the  
14 record, as well as in the presence of these other persons  
15 here, because I think those matters are matters that ought  
16 to be aired so that everybody understands what is to be  
17 accomplished here and how this whole system could work in a  
18 fairly short order for the betterment of the City of  
19 Jackson. So I'm going to come right back to you, but first  
20 I want to hear from the City of Jackson. So thank you.  
21 I'll come right back to you.

22 MR. HENIFIN: Yes, Your Honor.

23 MS. MARTIN: Your Honor, Torri Martin again for the  
24 City of Jackson.

25 I was going to try to address some of the issues. I

1 was taking notes as you were asking questions of  
2 Mr. Fingerhood. I don't think that anybody in the City of  
3 Jackson would disagree that our solid waste collection  
4 system is in trouble -- sewage system. I'm sorry. I've  
5 been talking about solid waste for so long. I'm mixing it  
6 with wastewater. I apologize.

7 Arguably the system is in a worse position today than  
8 it was in 2013. The City of Jackson in 2013 entered into  
9 this consent decree with the Department of Justice and the  
10 EPA and MDEQ, and in the first few years of that consent  
11 decree, I think that the City would argue that we were  
12 substantially in compliance with that consent decree.

13 But I would also say that at the time that we entered  
14 into that consent decree, the estimated amount of the cost  
15 of funding that consent decree was \$800 million. The City  
16 of Jackson, at no point throughout since 2013 have we ever  
17 had \$800 million to fund a consent decree for wastewater.  
18 So what the City of Jackson has done over the last -- you  
19 know, since 2013 is tried our best to comply with the  
20 resources that we have had available.

21 And what we have found internally is that what that has  
22 led to is us spending a substantial -- excuse me -- is to us  
23 spending a substantial amount of money and time on studying  
24 the collection system and submitting the reports that were  
25 required under the consent decree, but it has not allowed us



1 to spend time and money on actually moving forward with  
2 repairs to the collection system.

3 And so when you say that the system is in a worse place  
4 today than it was then, it's because of that deferred  
5 maintenance to the system. It's because we have located --  
6 we have consistently located dry-weather SSOs and we have  
7 consistently located sewer failures, but we have not had the  
8 funds to actually repair those SSOs and those sewer  
9 failures.

10 So, as you know, our list has continued to grow. It's  
11 currently at approximately 256, and it continues to waver  
12 around a 256 number because we simply do not have the  
13 revenue to actually perform all of those repairs.

14 When we talk about the last couple of years, what the  
15 City of Jackson did in November of 2021 is for about a year  
16 and a half prior to '21, we hired outside counsel to come in  
17 and help us negotiate or try to negotiate a modified consent  
18 decree.

19 We proposed that modified consent decree in the  
20 wastewater matter in November of 2021. We have yet to  
21 actually get a response -- or a formal response from the  
22 Department of Justice and Environmental Protection Agency on  
23 that proposal. However, after November of 2021, we  
24 experienced a water crisis in August of 2022. When we  
25 experienced that water crisis, we turned all of our

1 attention to water, to drinking water, Safe Drinking Water  
2 Act.

3 Once we resolved that, once you executed the order on  
4 the Safe Drinking Water Act, what the City of Jackson did is  
5 we asked the Department of Justice and Environmental  
6 Protection Agency and MDEQ to switch focus to sewer. At  
7 that time, what we told them is that we felt like we were  
8 one step away from a crisis in terms of sewer.

9 And so in January of 2023, we asked the Department of  
10 Justice and the Environmental Protection Agency and MDEQ if  
11 we could move forward with some modification to the consent  
12 decree requirements so that we could focus our time and our  
13 money on repairing the problems in the system and not on  
14 program management for the reporting requirements. And  
15 since that time, that's what we've been negotiating.

16 Your Honor, you asked earlier about an amendment to the  
17 stipulated order. I believe that the City of Jackson agrees  
18 with the Department of Justice in that we think that it  
19 should be a separate document. However, we do not think  
20 that that document should be a consent decree. Our  
21 experience with consent decrees is that they have not been  
22 successful in terms of us actually meeting the goal of our  
23 citizens, which is to improve the collection system itself.

24 I think what the City of Jackson would like to see is  
25 for us to stay the current consent decree on the wastewater

1 system and for us to move forward with a short-term  
2 agreement that would allow us -- and when I say "us," I  
3 might be including Mr. Henifin, that would allow the City of  
4 Jackson to move forward really focusing on those 256 SSOs  
5 and trying to actually gain some type of resolution for  
6 those before moving forward with the underlying requirements  
7 of the consent decree.

8 THE COURT: What kind of time frame are you suggesting  
9 for the address of those 256 eruptions?

10 MS. MARTIN: Your Honor, I would say based on the  
11 amount of funding that we currently have available, I think  
12 you need at least a year or two, maybe even three. And the  
13 funding is -- you know, Mr. Henifin, we've had -- the City  
14 of Jackson has had several discussions with Mr. Henifin  
15 about the funding, about his financial management plan, and  
16 about what it would look like for us to essentially marry  
17 the two.

18 And so some of the restrictions that we have on funding  
19 come down to the bonds that we currently have, and it also  
20 comes down to the loans that we currently have on both  
21 systems, the drinking water and on the wastewater side. We  
22 have loans and we have bonds on those two.

23 I believe Mr. Henifin's plan is to pay down that debt  
24 and to take -- and I don't know if he -- I can't remember  
25 now if he has explained this in these meetings or not, but

1 to take the PAYGO, so the money that's being generated, and  
2 to put it back into the system.

3 With the money that the City of Jackson currently has  
4 available, we really think that we are going to have to  
5 separate this into neighborhoods and focus on the  
6 neighborhoods with the most SSOs that have been reported and  
7 to try and tackle it neighborhood by neighborhood.

8 We previously submitted a priority project list to the  
9 Environmental Protection Agency, Department of Justice,  
10 MDEQ, and Mr. Henifin, and so we've been looking at that  
11 priority project list with everybody that's in this room,  
12 with the exception of MDEQ, but we have also submitted that  
13 list to MDEQ. And in that list, we proposed that we start  
14 with the Queens neighborhood and the SSOs that are in that  
15 neighborhood and then move down that list in trying to  
16 tackle some of the problems that we have, because we know we  
17 have some major issues in that area. But I think that the  
18 funding will really determine the timing.

19 THE COURT: Now -- and could you slow down for my court  
20 reporter?

21 MS. MARTIN: Sorry, Your Honor.

22 THE COURT: All right. Now, Ms. Martin, thank you for  
23 that update, but I still have a couple of questions here.

24 MS. MARTIN: Okay.

25 THE COURT: To someone who is not familiar with the

1 gravity of the sewage problem but only imagining what the  
2 sewage problem actually looks like, and then to someone who  
3 has seen raw sewage bubbling up from the ground, it is most  
4 disconcerting to hear an estimate of one to three years for  
5 that dilemma to be addressed and remedied.

6 When our tour group saw raw sewage coming out of the  
7 ground out there on Northside Drive, it was very troubling  
8 to see raw sewage coming out of the ground, forming a small  
9 cesspool nearby concomitant with odor, and possibly even  
10 disease possibility later, and close to a senior citizen  
11 home.

12 So this estimate of one to three years is most  
13 concerning, and the public I'm sure will be alarmed to think  
14 that it would take that long to address a problem so  
15 dangerous. But you're saying that under the City's  
16 projection, owing to the lack of funding, you're saying that  
17 that's how long it will probably take?

18 MS. MARTIN: Yes, Your Honor, that is my estimate. And  
19 I will say that we have experienced some horrific claims  
20 when it comes to sewage. That's one of the reasons why in  
21 January of this year we went to the EPA and DOJ and said  
22 this is an emergency. We have got to address this problem.  
23 But based on the funding that we have had available -- and I  
24 will say part of the lack of funding comes down to, you  
25 know, we had a significant period of time where we had

1 reduced water and wastewater billing collection. We also  
2 had a downgrade in 2018 of our bond rating. Of course you  
3 had the pandemic. We had shortages with personnel,  
4 inflation, supply chain issues, and a continuing decline in  
5 our population.

6 But also, we have consistently had to be aware of the  
7 fact that we have a large number, 25 percent, of our  
8 population that lives in poverty. And so earlier you heard  
9 Mr. Fingerhood talk about rates and increasing rates. We  
10 have had to consistently be aware of the fact that we can  
11 only raise rates so much before our citizens will be unable  
12 to afford the rates that are necessary in order to fix this  
13 problem.

14 We did have a rate increase in November -- excuse me --  
15 or was it November or December -- in December of 2021, we  
16 took a rate to the city council that did pass. That was the  
17 first rate increase we had had in several years. But our  
18 projections based on the consultant we have worked with on  
19 this issue is that it will take some much higher rate  
20 increases that most of our citizens cannot afford. But in  
21 addition, it will take other funding. It will take funding  
22 from the federal government; it will take funding from the  
23 state government in order for us to fix this issue. And we  
24 have consistently requested funding from both.

25 THE COURT: I have had some conversations with our

1 third-party manager, Mr. Henifin. He has some, I think,  
2 wonderful ideas as to how we can move forward on addressing  
3 these problems in a forthright and immediate reaction, and  
4 later I'm going to call back on him to provide that, and I  
5 would very much appreciate it if you would, at the time that  
6 he does this, listen carefully to what he has to say,  
7 because I don't know if you've had a chance to see his  
8 statistics and his figures on these particular problems, but  
9 I have. And then I'd like you to react on that.

10 But now let me go to another matter. You also  
11 mentioned the bond structure for the City relative to these  
12 issues. The bond structure is not good, is it?

13 MS. MARTIN: No, Your Honor. When you say "not good,"  
14 I think I understand what you mean, but I think the answer  
15 is no.

16 THE COURT: Well, what it means is that the City of  
17 Jackson is not in a position to borrow money, is it?

18 MS. MARTIN: Correct.

19 THE COURT: And is not in a position to borrow money  
20 because of its bond rating, correct?

21 MS. MARTIN: Correct. I think we have exceeded our  
22 capacity.

23 THE COURT: And a city's bond rating has a huge effect  
24 as to whether that city can borrow money in times of need,  
25 to go to the bonding market, to get approved by the state to

1 issue a bond, and then investors will then be enticed to buy  
2 bonds on the notion that buying bonds -- that over a certain  
3 amount of time, a certain number of years, that those bonds  
4 can be cashed in and the citizenry investors can then derive  
5 investment income from those bonds.

6 But whether an investor will actually put forward any  
7 interest in investing in a bond depends upon confidence that  
8 at the end of that period, when the bond is supposed to be  
9 cashed in, that the city will be able to pay those who have  
10 invested in the bond. And as a result, to encourage folk to  
11 enter the bond market, a rating system has been developed,  
12 and investors then who are interested in an investment of  
13 bonds, municipal bonds; that is, city bonds, they can turn  
14 to that rating system and see what that rating system had to  
15 say about the city's capacity at some point when the bonds  
16 are to mature that the city will be able to pay that money  
17 off; that is, pay the investor back for having taken a  
18 chance during this time period to invest in the bonds.

19 But, on the other hand, if the bond rating is poor,  
20 investors aren't going to take a chance on buying bonds.  
21 And, further, the lending institutions aren't going to take  
22 a chance at lending any money towards a bond for a city in  
23 that regard. So what you're telling me then is at this  
24 point, the City's bond rating is so low that the City cannot  
25 find entities willing to extend money to the City for bonds,



1 and investors mostly will not invest in any bonds put  
2 forward by the City because they don't have confidence that  
3 at the time of maturity that the City will be able to pay  
4 them off for those bonds. Am I correct?

5 MS. MARTIN: Yes, Your Honor, that's my understanding.

6 THE COURT: So during this time period now, in your  
7 estimation, what can the City do to improve its bond  
8 appearance? At this juncture, what could the City do?

9 MS. MARTIN: We can increase revenues, which I think  
10 Mr. Henifin has a plan for, and I do believe that  
11 Mr. Henifin's financial management plan to pay down our debt  
12 would also increase our ability to borrow money.

13 THE COURT: Okay. Now, at one point, I believe the  
14 City was interested in borrowing some money. Am I correct?

15 MS. MARTIN: We have not been interested in borrowing  
16 money. If we have, it was SRF loans, which are loans that  
17 are low-interest-rate loans that are offered to us through  
18 the State of Mississippi.

19 THE COURT: But that would increase the debt that the  
20 City has.

21 MS. MARTIN: Correct.

22 THE COURT: And under Mr. Henifin's plan, the City  
23 would be reducing its debt.

24 MS. MARTIN: Correct. Under Mr. Henifin's plan, we'd  
25 be reducing our debts.

1           THE COURT: So when I looked at the two, it seemed --  
2           because I have seen that interest in incurring some new  
3           debt, but it would just seem to me that between the two,  
4           that Mr. Henifin's plan is a better plan for the City of  
5           Jackson to reduce its indebtedness as opposed to taking on  
6           new obligations that would merely increase its debt  
7           obligations. What do you think?

8           MS. MARTIN: I will not offer an opinion, but what I  
9           will say is --

10          THE COURT: I'm not trying to put you on the spot.

11          MS. MARTIN: What I will say --

12          THE COURT: But I'm putting you on the spot.

13          MS. MARTIN: You're putting me on the spot. I cannot  
14          speak for the administration -- I cannot speak for our  
15          executive and legislative branches. However, what I will  
16          say is that at this time, I think that Mr. Henifin is the  
17          most qualified -- he is likely the most qualified individual  
18          to lead our wastewater division at this time.

19          THE COURT: All right.

20          MS. MARTIN: That's what I will say.

21          THE COURT: That is a very politic answer. I thank  
22          you. Thank you so much.

23          MS. MARTIN: Thank you, Your Honor.

24          THE COURT: All right. Now, then, Mr. Henifin, I have  
25          you now center stage.

1 MR. HENIFIN: Yes, Your Honor.

2 THE COURT: Let's start with that then, if you don't  
3 mind. Tell us about the plan that you have crafted that you  
4 think would address our concerns in as short a time period  
5 as possible.

6 MR. HENIFIN: Yes, Your Honor. And to Ms. Martin's  
7 points, there's going to be some time to resolve these  
8 overflows, even with all the money in the world. Contractor  
9 capacity and the actual need to basically clean the system  
10 from top to bottom in the areas where there's been  
11 overflows, where there's problems, I don't have a real good  
12 estimate on that at this point, but I would say her one to  
13 three years is not out of the range.

14 I would say we would be focused, because, again, of the  
15 structure of a stipulated order. If I had the same concept  
16 of relief from state procurement laws and I had this funding  
17 in hand that I should have in hand very soon from the  
18 federal government, that we can make rapid progress. But I  
19 don't know that we'll get to the end within the first year.

20 THE COURT: Now, one second.

21 MR. HENIFIN: Yes, sir.

22 THE COURT: While this sewage problem persists and we  
23 are having in so many areas raw sewage still bubbling up,  
24 what is the short-term release for people in those  
25 neighborhood -- I said release. I meant relief -- for those

1 people in those neighborhoods where raw sewage is bubbling  
2 up even as we speak today?

3 Now, the figure that you and I had talked about before  
4 was about what Ms. Martin had said, because she said 256,  
5 and we had talked about 250 or more, so you all are in the  
6 same camp as to your estimates, and that's what I was  
7 provided, you know, previously. So what are the citizenry  
8 to do in the short term while raw sewage is bubbling up from  
9 the ground?

10 MR. HENIFIN: Your Honor, I don't have a good answer  
11 for that. You know --

12 THE COURT: Give me the best you got.

13 MR. HENIFIN: Pardon?

14 THE COURT: Give me the best you got.

15 MR. HENIFIN: The best I've got is we would proceed  
16 immediately with some contract support to go to those  
17 communities that have those 250-some and do our best to  
18 resolve the ones that can be resolved quickly through  
19 cleaning, through vacuum trucks, through getting the pipes'  
20 small repairs done.

21 But as we build a larger backlog of the repairs that  
22 need to be done to eliminate those, the best we're going to  
23 do is this current process, which is essentially putting a  
24 sign up warning people not to go into the areas where  
25 there's bubbling up sewage, because it does provide a health

1 hazard.

2 There are signs posted today in many of these locations  
3 in the city to warn people to stay out of those areas until  
4 we can get them resolved.

5 But, frankly, the only thing we're going to be able to  
6 do is run as fast as we can to try to get those done. Give  
7 it everything we've got, get multiple contractors here,  
8 national scale folks, to bring the resources we need to put  
9 to that in a very fast manner.

10 What we haven't mentioned, unfortunately, Your Honor,  
11 is there's also a problem with building backups. It's one  
12 thing for the sewage to be bubbling up on the street like we  
13 saw or in a yard. It's another thing when it bubbles up in  
14 your bathtub or in your shower or out of your toilet and it  
15 flows into your house.

16 We're having a number of those as well, and those are  
17 all related to the same issues of needing to clean the  
18 pipes, make sure that the flow is there. We might need to  
19 put some backflow preventers on the sewer lines so that  
20 sewage doesn't back up into some low-lying houses. And  
21 that's, in my opinion, higher priority than the stuff that's  
22 bubbling out onto the street in neighborhoods. We need to  
23 solve and prevent sewage from backing up into people's  
24 homes, because I can't think of anything worse.

25 THE COURT: And when a homeowner calls on the hotline

1 to report such, what do you think the response time is going  
2 to be?

3 MR. HENIFIN: Well, standard response time should be  
4 less than two hours. And that's what we will be going for  
5 initially.

6 THE COURT: And do you have the equipment to deal with  
7 this?

8 MR. HENIFIN: We will have to contract for that. We  
9 don't have the staff or equipment. It's bringing a  
10 contractor in with that capability, or multiple contractors  
11 in with that capability, will be the only way we'll be able  
12 to solve that.

13 THE COURT: You know, we talked at length about this  
14 matter -- well, we've been talking at length about all of  
15 these matters, but when I first saw this bubbling up effect  
16 out there on Northside Drive, you might remember that I  
17 offered to pay for a cleanup out of my own pocket for that  
18 particular one, because at the time, I was under the  
19 impression that we just didn't have that many that severe.  
20 And so I said that since I know some agencies who clean out  
21 the pipes, then what if I just donated some money and got  
22 that done and not charged anybody. That's when you first  
23 told me how many were involved.

24 MR. HENIFIN: Yes, Your Honor.

25 THE COURT: And then you told me that, well, it's not

1 just one. It's about 250. And then we had a long talk  
2 about that and what it would take to clean out some of these  
3 pipes.

4 Do we have the trucks and the equipment now to clean  
5 out those pipes?

6 MR. HENIFIN: I would have to refer to the City, but as  
7 I understand it, they've got -- they had three trucks. They  
8 got them fixed, I believe, and they've got them back in  
9 their possession. They've recently bought a fourth used  
10 one. I believe their limitation is the crew, but I would  
11 have to ask the City to comment on that, but --

12 THE COURT: At the time we had our conversation, the  
13 City did not have the trucks --

14 MR. HENIFIN: Right. The three --

15 THE COURT: -- to actually go out to clean out the  
16 pipes.

17 MR. HENIFIN: Yes, sir, Your Honor. The three trucks  
18 were in the shop, and they weren't able to pay the bill, and  
19 they were being held hostage by the vendor that was -- that  
20 had done the repairs.

21 THE COURT: And so the City at that time did not have  
22 any one of these three trucks, and now, as I understand it,  
23 the City has an operator problem; is that correct? That is,  
24 someone who can operate --

25 MR. HENIFIN: That's my understanding, my most recent

1 understanding. I haven't talked to the City of late on  
2 that. Ms. Martin or Mr. Williamson would have to talk to  
3 that.

4 THE COURT: As to whether they have an operator  
5 problem, anyone trained to be able to do this, even if there  
6 is a truck in existence that could go out, even if they only  
7 have a truck, that means that they have one truck for trying  
8 to address all such problems.

9 MR. HENIFIN: Yes, Your Honor.

10 THE COURT: Is that your understanding?

11 MR. HENIFIN: Yes, Your Honor.

12 THE COURT: So then if the sewage matter is placed  
13 under your tutelage, as I expect for it to be, then how  
14 would you address that circumstance?

15 MR. HENIFIN: So I'd be looking to contract out that  
16 entire operation, similar to what I've had to do on the  
17 water side. It's severely underresourced, understaffed, and  
18 there's not time, as you pointed out. These are urgent  
19 matters.

20 There's not time to staff up, buy new equipment, train  
21 people. I need to turn to a contractor that's got all these  
22 resources already developed. And to the extent we can get  
23 the contractor to agree to hire some of the city employees,  
24 which we have done successfully in many cases on the water  
25 side, we'd be looking at contractors and asking them to see



1 if they would hire any of our existing employees, the city  
2 employees, to put them to work essentially doing the job  
3 they're doing but with appropriate management tools,  
4 equipment, scheduling, and probably even higher pay as a  
5 result.

6 So it would be very similar and maybe not so popular a  
7 move to eliminate the city function and convert it to a  
8 contracted function going forward. But, again, it's the  
9 combination of this is an urgent problem. It doesn't have  
10 time for us to go out, hire more staff, train the staff, buy  
11 the equipment, and put them to work.

12 And so the fastest, most expeditious method of doing  
13 this is to get contractors to come in and do that. And to  
14 the extent they would be willing to hire some of our folks,  
15 some of the city folks, that's the best we're going to be  
16 able to do to make this happen fast.

17 THE COURT: So, meanwhile, until we reach a permanent  
18 solution, we run the risk of disease, sickness, correct?

19 MR. HENIFIN: Yes, Your Honor.

20 THE COURT: But are there any statistics before us  
21 which show that we have had and experienced a greater degree  
22 of such hazards befall upon our citizenry in the most recent  
23 past? Do we have any statistics that show that we've had  
24 greater hospitalizations or medical visits or things like  
25 that?

1 MR. HENIFIN: Not that I'm aware of, Your Honor. Often  
2 that's a very hard correlation to make. There's a lot of  
3 reasons for folks to develop gastrointestinal -- most  
4 sewage-related illnesses are gastrointestinal. There's just  
5 not a great national tracking of the cause, was it exposure  
6 to sewer, or was it exposure to sewer and recreational  
7 waters?

8 I think EPA has done extensive studies, and they know  
9 some correlation between a sewer overflow and the potential  
10 for illness as a result of that based on the number of  
11 gallons released and how the contact was, and I would turn  
12 it over to the EPA scientists if they want to deal with  
13 that.

14 But I know there is a correlation between being exposed  
15 to sewage and gastrointestinal illnesses. The problem is on  
16 the health side, most doctors don't recognize, ask the right  
17 questions, or report it on a national level that we would  
18 really understand the impact, so I don't think you'd be able  
19 to tease that out of medical information here in Jackson.  
20 It's harder even on a larger scale.

21 I just don't think our health system is in tune to  
22 that, because as a country, as a developed country, we've  
23 largely eliminated waterborne illness related to raw sewage  
24 because of the work of EPA over the last 50 years. They've  
25 been laser focused on eliminating sewer overflows from

1 communities across the country. They've done a very good  
2 job of doing that through a combination of enforcement,  
3 encouragement, training, funding. We had huge federal grant  
4 funds available back in the late '70s and into the early  
5 '80s.

6 We've basically eliminated the issue of raw sewage that  
7 plagues all developing countries. You know, the biggest  
8 health hazard in most other countries is exposure to raw  
9 sewage either through drinking water -- contaminated  
10 drinking water or just the lack of sewage collection  
11 ability.

12 Over three and a half million people die a year from  
13 sewage waterborne illness, and 95 percent of them are  
14 children. The U.S. doesn't have these kind of statistics  
15 because we've solved the sewage problem, and we need to  
16 solve it here in Jackson.

17 THE COURT: Okay. Now, let's go to the matter of  
18 revenue for the plan to deal with the sewage problem. You  
19 have a plan for that?

20 MR. HENIFIN: Yes, Your Honor. So the financial plan  
21 that I laid out in January as part of this order actually  
22 outlines how we can take -- again, key to this is retiring  
23 the debt, and we've talked about that a little bit, and  
24 we're still working through some challenges around the way  
25 the money is flowed to us through the Safe Drinking Water

1 Act. But we've got lots of people with great ideas that are  
2 hoping to unwind that so we can figure out how to retire all  
3 of the debt.

4 But if we can do that, we also need rates, local  
5 revenue. We've talked about our metering challenges over  
6 many years, the fact that there's customers without meters;  
7 there's customers without paying; there's customers that  
8 don't accounts in our system.

9 We need to solve that, and the fastest way, again, may  
10 not be the most popular, but it looks like if we could do an  
11 interim rate based on something other than water  
12 consumption, we wouldn't impact the 25 percent of our  
13 population that lives in poverty. In fact, they would see  
14 reduced rates.

15 We would impact some of our more wealthy citizens.  
16 They would see an increase in their water and sewer bill.  
17 Combined it can generate enough revenue to put the system on  
18 pace to be -- again, retire the debt, find an appropriate  
19 way to recover the revenue of the \$70 million, roughly, we  
20 need a year to operate the sewer and water system.

21 And then over the next five years, if we stick to the  
22 plan, again, using federal dollars for the drinking water  
23 issues that we've got to solve, local dollars to pour  
24 towards the sewer, match the Corps of Engineers' 219 money  
25 with water money -- again, that was your reference to

1 potentially considering additional debt. For those who  
2 didn't quite follow that conversation, that was -- the 219  
3 money from the Corps of Engineers requires a local match,  
4 25 percent, and at one point when these issues were  
5 separate, and they still are separate, so, you know, in our  
6 current situation the only way the City can find the dollars  
7 to make that match essentially would -- one of the options  
8 would be borrowing more State Revolving Loan Fund money so  
9 they would have the money to match the Corps of Engineers'  
10 dollars to put that into the sewer.

11 By combining the two, we can use some of our Safe  
12 Drinking Water Act money we're getting from the federal  
13 government as the match to the 219 dollars coming from the  
14 Corps of Engineers, so we can do sewer and water in the same  
15 project and not have to borrow any additional money, so  
16 that's sort of where that was.

17 So I think if we get this -- the revenue right, retire  
18 the debt, and use the federal dollars to the maximum extent  
19 possible in the way my plan is laid out, we would reach "A"  
20 rated -- going back to your ratings, "A" rated credit  
21 utility standards, the metrics by which you measure a rating  
22 is typically number of days' cash on hand and the amount of  
23 PAYGO you're able to generate and put back into your system.  
24 Rate utilities can put about -- 2 percent's sort of the gold  
25 standard. If you can reinvest 2 percent of your plant value

1 every year back into your system with PAYGO money that  
2 you're generating from your rates, that would be a gold  
3 standard for utility.

4 And I'm not sure -- there's probably only the "AAA"  
5 rated utilities in the United States that are at that 2  
6 percent mark. Everyone else falls a little bit short. Most  
7 people are in the 1 to 2 percent range. That means you're  
8 replacing your facilities every 100 -- or if it was 2  
9 percent, it'd be every 50 years.

10 And that's a great reinvestment for this kind of  
11 infrastructure. It has a long lifespan anyway. The plan I  
12 put forward shows that we can generate 20 million a year,  
13 which is 2.7 percent of the current plant value of the water  
14 and sewer systems combined.

15 So it would put us in a really great position  
16 financially after five years and then keep us on that  
17 position for the next 20 according to the financial plan.  
18 Obviously it's a plan. Everyone has a plan until you get  
19 hit in the face, but we will -- I think it's a sound plan.  
20 And assuming we can get the debt worked out and the rates  
21 put in place, I think we're on a good path, water and sewer.  
22 And that generates local revenue put into the sewer system,  
23 and we would dedicate pretty much most of the local revenue  
24 at that point, a big chunk of the local revenue, into the  
25 sewer system to make sure that we get a big jump on these

1 urgent problems that we've been talking about.

2 THE COURT: And another beneficial effect of that plan,  
3 should that plan succeed, would increase the attractiveness  
4 of the bond structure.

5 MR. HENIFIN: So the City's bond structure, they would  
6 have no outstanding debt related to water and sewer. I'm  
7 not sure if they've got any general obligation debt. It's  
8 not large, I don't believe, but I don't know. You'll have  
9 to ask them.

10 But, yeah, from a bond rating standpoint, it should  
11 improve to the point where they could borrow money if  
12 needed. And in my plan I show a potential for a new plant  
13 or a major investment in the 2030 timeframe, and we can  
14 support that debt through a State Revolving Loan Fund-type  
15 loan, about \$150 million in that time frame, and still not  
16 impact our ability to generate PAYGO, not have to increase  
17 rates any more than the plan already had in it. So, yes, we  
18 should be much more attractive to lenders as well as  
19 investors at that point.

20 THE COURT: So that plan then would have us experience  
21 a self-sustaining water system, sewage system?

22 MR. HENIFIN: Yes, Your Honor.

23 THE COURT: And they'd be able to pay their own way?

24 MR. HENIFIN: Yes, Your Honor.

25 THE COURT: It's also going to mean there's going to

1 have to be a purge of the rolls.

2 MR. HENIFIN: Yes, Your Honor. So by switching on the  
3 near term to a property attribute-based rate, we would grab  
4 assessor's data and blend it into our data, so we would be  
5 billing property owners, a hundred percent of property  
6 owners, as opposed to, you know, trying to figure out who's  
7 got a meter, where the meters are.

8 Meters become a tool for us to manage our system at  
9 that point to keep track on pressure, look for big losses,  
10 use listening devices. There's active listening devices we  
11 can turn on in the meters to listen for leaks. Again,  
12 remember we're looking hard for our 30 million gallons of  
13 lost water, and you got to visit where we were losing 5  
14 million gallons a day. We've fixed that. We've got a long  
15 way to go.

16 If we get enough of these leaks fixed on the water  
17 side, we could potentially close the fuel plant in very  
18 short order and save 6 to \$7 million a year in operation and  
19 maintenance costs immediately.

20 So there's lots of potential out there. We've just got  
21 to keep, you know, running fast and trying to make the right  
22 investments.

23 THE COURT: And at the present time, we are making  
24 headway, are we not?

25 MR. HENIFIN: Yes, Your Honor.



1 THE COURT: In fact, one big step was the closing of  
2 the waterfall rupture.

3 MR. HENIFIN: Yes, Your Honor.

4 THE COURT: That's what I called it.

5 MR. HENIFIN: That is what it was.

6 THE COURT: Yeah. I mean, it was a regular waterfall.  
7 I mean, it was a miniature Niagara, you know, out there.

8 MR. HENIFIN: We think we'll have -- you know, we're  
9 trending water data just to see how much we're putting into  
10 the system month by month. We haven't got the April numbers  
11 exactly right yet, but over the first quarter, we reduced  
12 the amount of water we needed to put in the system by 2  
13 million gallons each month in that quarter.

14 So we went from 52 million gallons in January to 48 in  
15 March. So we're on a good trend. We need that number to  
16 actually be down around 25, so we've got a long way to go,  
17 but we're on the case. We've got, again, two brilliant  
18 young former city -- well, they are still city employees,  
19 but they're working for me full-time, that are just out  
20 there every day trying to figure out where the next leak is,  
21 where the next valve's closed. They're giving it everything  
22 they've got. They're well equipped. They're very smart,  
23 and they're making progress.

24 THE COURT: Okay. One second. Don't move. Let me see  
25 if I have another question here.

1           Okay. Thank you.

2           I turn back to the City now. Ms. Martin, don't trip in  
3 here now. Our insurance is not too good. Now, I notice you  
4 almost tripped over your purse.

5           MS. MARTIN: It was my purse.

6           THE COURT: Yeah. I want the record to reflect that if  
7 you want to later contend that you were injured in this  
8 courtroom --

9           MS. MARTIN: No workers' comp.

10          THE COURT: -- it was over your purse that you put out  
11 there in the aisle.

12          MS. MARTIN: I did.

13          THE COURT: Okay. Now, so I just want to be sure,  
14 because our insurance agent will ask.

15          MS. MARTIN: Speaking of insurance, Your Honor.

16          THE COURT: Go ahead and speak.

17          MS. MARTIN: So you mentioned earlier about short-term  
18 relief for people in neighborhoods who are currently  
19 suffering from some of the sewer overflow issues. I do  
20 agree with Mr. Henifin's comment that the focus should  
21 really be on the sewer backups as opposed to the sewage in  
22 the streets, at least in terms of priority.

23                 What we currently have in place at the City of Jackson  
24 is the risk management department. One of the reasons why  
25 we went to the EPA, Department of Justice, and MDEQ in

1 January of this year was based on the number of claims we  
2 were getting in on sewer. We get sewer claims in to our  
3 Risk Management Division where they go in and they  
4 evaluate -- they do two things: They investigate with our  
5 Public Works Department to determine whether or not the City  
6 can fix the issue, and then the second thing that they do in  
7 the Risk Management Division is they actually try to mediate  
8 and compensate individuals for loss based on the sewage  
9 claims.

10 And so they are kind of our first arm. It's a separate  
11 division from the main legal department. It does fall under  
12 my office, and so that's one of the reasons why I see all of  
13 those claims. But what we currently do is if the City of  
14 Jackson -- if we have an issue with an SSO or we have a vac  
15 truck that we can send out and it clears the system, we do  
16 that.

17 But I will say this with this caveat: Typically if  
18 it's a larger issue and we're going out and we're clearing  
19 the system, clearing the system is a temporary fix. So we  
20 will send a truck out; they will clear the system. If there  
21 was a backup in the home, we compensate those individuals  
22 for whatever damage there was in their home, and even if  
23 they were displaced from their home. If they can prove to  
24 us that they were displaced from their homes, then we also  
25 compensate them for days in hotels.

1           We have a claim right now that we're looking at where  
2           we have a broken sewer line that's underneath a home that's  
3           been there for quite a while, and on that particular claim,  
4           we're actually looking at the value of the home versus our  
5           ability to fix that much larger sewage issue. And so our  
6           Risk Management Division consistently goes through those  
7           claims as they come in and evaluates whether or not we can  
8           pay the claim and whether or not the Public Works Department  
9           has sufficient equipment to fix whatever the issue is.

10           THE COURT: Now, one second. Hold it.

11           MS. MARTIN: Uh-huh.

12           THE COURT: You were telling me about this sewage  
13           problem under this house.

14           MS. MARTIN: Uh-huh.

15           THE COURT: And you were trying to determine which is  
16           more expedient or expeditious with regard to remedying that  
17           particular problem.

18           MS. MARTIN: Yes, Your Honor.

19           THE COURT: Now, so then the first thing you looked at  
20           was whether you all could go under the house and deal with  
21           the piping, the tubing, and everything else under the house.

22           MS. MARTIN: Yes.

23           THE COURT: But I don't quite understand that approach  
24           right now. And I'm sure it's correct, you know, because you  
25           all are more expert than I am, but I understand that the

1 sewage pipes are only about two feet under the ground. Is  
2 that so?

3 MS. MARTIN: That, Your Honor, I'm not certain of. I  
4 might defer to Ted Henifin on that. He's the expert.

5 THE COURT: Mr. Henifin, is that correct?

6 MR. HENIFIN: For a service line to the house, it's  
7 probably in that two-to-three-foot range. I think in this  
8 particular case -- in this particular case, it's a main line  
9 that was actually built, and then a house was built on top  
10 of it.

11 Now, that should have never happened, but things  
12 happen. And so now you've got a line that's probably six to  
13 eight feet deep and a larger diameter. You need a large  
14 excavator to get to the break. That's why you don't build  
15 sewer lines under houses and structures.

16 So that somehow this one probably was put in without an  
17 easement. No one knew it was on the lot when the builder  
18 came following that at some point and built their house. It  
19 happens in communities across the country where it just  
20 doesn't get recorded quite right, the contractor putting the  
21 line in at the time cut it through a developable lot but  
22 didn't actually get an easement recorded, so the lot still  
23 looks like it's open and available to build on.

24 Someone buys it, builds on it, never knew that there  
25 was a sewer line under it until it fails, and now you've got

1 to figure out how to get the house off of the sewer line so  
2 you can dig down to it, which means you acquire the house,  
3 you tear it down, relocate the people. But it's not unique  
4 to Jackson. It's happened in every community I've been  
5 around. It's not common, but it's not unique.

6 THE COURT: Well, thank you for the explanation,  
7 because, as I said, I was under the impression that sewage  
8 line would only lie two to three feet, you know, under the  
9 ground, and thus I couldn't understand why this posed such a  
10 problem if the sewage line was that shallow under a house,  
11 why they just simply couldn't go under the house and deal  
12 with two or three feet. And so now I understand why that  
13 happened.

14 MS. MARTIN: It's a very unique situation. But our  
15 Risk Management Division is kind of the first line of  
16 defense, and they do go in and do their best to try and  
17 mediate the claims that come in. If there is a collapse,  
18 then we do have -- we can put in a bypass pump, but, again,  
19 that's temporary.

20 A lot of fixes that we currently are able to afford to  
21 do are temporary fixes, because we don't have the resources  
22 for those more long-term fixes.

23 You asked earlier about our equipment. We do have four  
24 trucks, but three of them are more than ten years old. The  
25 fourth one is new. However, we only have currently two

1 drivers, because the drivers of those trucks, they're  
2 required to have CDL licenses, and we currently only have  
3 two drivers that are capable of driving those four trucks.

4 THE COURT: Now, you need to put some more meat on the  
5 skeleton, because people who are informed that you just need  
6 a CDL driver are going to say, well, that's all it takes for  
7 me to do down and get one of those jobs and drive one of  
8 those trucks. They're gonna be rushing down. But you need  
9 more than just a CDL, right, to drive one of those trucks?

10 MS. MARTIN: I would defer to our Public Works  
11 Department. They would have to be trained.

12 THE COURT: Yes. But they don't have to be trained to  
13 drive. They need to be trained how to use the equipment,  
14 right?

15 MS. MARTIN: Yes, how to use the equipment. Exactly,  
16 Your Honor.

17 THE COURT: In order to use the equipment to try and  
18 clean the pipe out along with that particular truck.

19 MS. MARTIN: Correct.

20 THE COURT: You know, what that truck --

21 MS. MARTIN: The vac truck.

22 THE COURT: Yeah. What that truck provides is some  
23 special equipment, so you need more than just a CDL driver.  
24 You need somebody who is skilled at how to clean that pipe  
25 out using the facilities on that truck. So it's more than

1 just a CDL, because then if some people heard that they  
2 don't have a CDL down there, well, I got a CDL; I'm going to  
3 hurry up and get on down there and apply for that job  
4 because that's all you need --

5 MS. MARTIN: Yeah.

6 THE COURT: -- but it's more than that, and I don't  
7 need any training because I have a CDL.

8 MS. MARTIN: It's specialized training, Your Honor.

9 THE COURT: That's right. But they need the CDL. They  
10 need the specialized training, because they have to know how  
11 to operate that truck and know how to utilize the equipment  
12 on that truck to clean out the piping and all of that.  
13 Right?

14 MS. MARTIN: Correct, Your Honor. You're right.

15 THE COURT: Now, since you mentioned something about  
16 being temporary, a few moments ago I said that when I saw  
17 the problem out there on Northside Drive and I was thinking  
18 all I had to do was call one of the local providers and have  
19 them come out there and scope that out and that will be it,  
20 but you also said that that could only be a temporary fix.  
21 Did you not say that, temporary?

22 MS. MARTIN: In some cases, us flushing the system with  
23 that vac truck is just a temporary fix because it's  
24 something else in the line that's causing it to be clogged.  
25 So we can go in and flush it out, but if there is something



1       else that's coming in that line -- so the example, I guess,  
2       that I have from public works is I know we had one house --  
3       or one sewer line that was -- it was backed up because of --  
4       it was close to a nursing home and there were -- not diapers  
5       but flushable wipes -- flushable wipes in the line, and  
6       so -- and diapers and stuff like that in the line.

7               So we came in and we flushed that line. But if they  
8       don't stop putting stuff down in the line that's causing it  
9       to clog, then it's temporary. So we come out and we flush  
10      it and it clears it for a temporary period of time, but then  
11      if they keep continuing to do whatever it was that was  
12      clogging the line, then we'd have to come back out and flush  
13      that line again.

14             THE COURT: Okay. Another thing, by the way, you  
15      didn't mention is grease.

16             MS. MARTIN: Grease, correct. That's another one that  
17      comes up a lot.

18             THE COURT: A lot of people have a habit of after they  
19      have fixed a huge meal, cooked a huge meal and utilized a  
20      lot of grease in doing so, they pour it down the toilet.

21             MS. MARTIN: Yep.

22             THE COURT: Or either they pour it down the sink, and  
23      they promptly clog it up. And then someone has to call one  
24      of these flushers out there to try and clean the line. And  
25      that's another thing. Not to mention another one, those

1 people who have a lot of young children and the young  
2 children threw their toys off into the toilet and that clogs  
3 it up.

4 So there are a whole lot of things that can cause the  
5 clog.

6 But when you said "temporary," those I don't see as --  
7 so much as being temporary, because these are acts of humans  
8 who just continue to do what they're doing. But I was  
9 wondering whether you meant temporary in the sense that even  
10 though you snake a line up in there, that it needs something  
11 more than just a snaked line up in there because of some  
12 other problem. Not continuous violations, but something  
13 else inherent in that matter. Is there something else?

14 MS. MARTIN: So you can have a collapsed line.

15 THE COURT: A collapsed --

16 MS. MARTIN: A collapsed line. So if you have a  
17 collapsed line, then our fix, we can do the bypass pump.

18 THE COURT: Right.

19 MS. MARTIN: But if we can't put a bypass pump in  
20 there -- the bypass pump will fix it, because it'll make it  
21 avoid the line. It'll go around the line.

22 THE COURT: Okay.

23 MS. MARTIN: It's bypassing it. But if we can't put a  
24 bypass pump in there and it's a collapsed line, we can go in  
25 and flush it, but it's going to be a short period of time

1 before it clogs again if the line is collapsed.

2 THE COURT: I see. Now, so you have one major truck on  
3 the scene now.

4 MS. MARTIN: Yes, Your Honor.

5 THE COURT: The other three are still in the shop?

6 MS. MARTIN: No. They are out of the shop. They are  
7 out of the shop, but they're just older. So they are out of  
8 the shop, but we don't have enough drivers for all four of  
9 them. We only have two drivers. So the brand-new shiny  
10 truck is being driven, and one of the older trucks is being  
11 driven, but we have to hire additional personnel for those  
12 other two trucks.

13 THE COURT: How many calls do you think are being made  
14 by this major truck that you have? How many calls are they  
15 answering, would you say, per day?

16 MS. MARTIN: So that's our public works director,  
17 Robert Lee. He said about ten to twelve trucks -- I mean  
18 ten to twelve calls are being answered per day by the new  
19 truck.

20 THE COURT: And how much time would you say is  
21 allocated to each occurrence when the truck shows up at some  
22 house?

23 MS. MARTIN: Depending on -- he said it depends on the  
24 issue. The amount of time depends on what the problem is.  
25 And if they show up and it's an easy issue, then they fix it

1 right away. And if it's not, then it goes on our list and  
2 they would have to come back.

3 THE COURT: And so you're saying ten to twelve per day?

4 MR. LEE: Yes, sir.

5 THE COURT: Okay. And we're talking about five days a  
6 week or six days a week?

7 MR. LEE: Before they ran -- seven this past week, sir.

8 THE COURT: Okay. Including Sunday?

9 MR. LEE: Yes, sir.

10 THE COURT: 7 times 12, that's 84. Okay. That's about  
11 right?

12 MR. LEE: Roughly, yes, sir.

13 THE COURT: Roughly.

14 MS. MARTIN: And for the record, I do want to state  
15 that's Robert Lee, our public works director, that's  
16 speaking from the audience.

17 THE COURT: Okay. Well, that's a lot -- that's a lot  
18 of calls.

19 MS. MARTIN: It is. But some of those calls -- so when  
20 we go out there, if we have the equipment to fix it at that  
21 time, we fix it at that time. But there are many calls that  
22 we go out, we recognize it's an issue that we cannot fix,  
23 and then it goes on that 256 list.

24 So the reason why that list fluctuates is as we're  
25 going out, we're curing the ones that we can cure. If we

1 can't cure it, then it stays on the list. There are some on  
2 the list that we have hired an outside contractor to come in  
3 and help us diagnose and fix.

4 And so the example I would give you on the outside  
5 contractor -- the reason why I said if we can afford to fix  
6 it, we fix it. If we can't afford to fix it, it stays on  
7 the list.

8 So an example with the outside contractor is that  
9 outside contractors can CCTV a line, and they can also clean  
10 a line. And we have a contractor that's \$250,000. Well,  
11 that \$250,000 contract only gets us 40 days. So it's about  
12 40 days of work that we can get from that outside contractor  
13 where they're going out, they're CCTV'ing, cleaning, and  
14 hopefully fixing many of them. But if they can't fix it,  
15 then they turn it back to us for us to know it's got to stay  
16 on the list.

17 THE COURT: Okay.

18 MS. MARTIN: So that's the process we've been going  
19 through, Your Honor. That's the process we've been going  
20 through.

21 You talked about a little bit with Mr. Henifin about  
22 the ability to generate revenue, and I believe earlier when  
23 I spoke with you, you wanted me to kind of hear his plan and  
24 respond to it.

25 So, Your Honor, what I would say is we have looked at

1 Mr. Henifin's plan in detail. We have looked at the  
2 spreadsheet. We've talked to him many, several times --

3 (An off-the-record discussion was held.)

4 MS. MARTIN: So in looking at Mr. Henifin's plan, the  
5 City of Jackson has some concerns about his ability to  
6 generate the PAYGO funds.

7 The main concern that we have is knowing what we know  
8 about collections in the City of Jackson, and the fact that  
9 Mr. Henifin has not yet been able to implement the rate  
10 increase, we have concerns on how long it will take for us  
11 to generate sufficient income to make changes -- or  
12 implement the changes that he would like to implement in our  
13 sewer system. And so we know that on the Safe Drinking  
14 Water Act there are sufficient funds there to fund the  
15 priority project list.

16 We do, though, still have some concerns about the  
17 ability to generate the PAYGO on the wastewater side,  
18 because it all depends on -- and I will -- you know, of  
19 course Mr. Henifin can respond to this, but we really  
20 believe that it all depends on his ability to implement the  
21 rate change and for citizens to actually start making those  
22 payments and start paying their bills. And because of the  
23 lack of collections that we've experienced over the last few  
24 years, we just have some concerns on his ability to actually  
25 generate that money.

1 THE COURT: All right. Thank you very much. While  
2 you're there, let me ask you a different question. I said  
3 that I am combining water and sewage. And we need a  
4 document which would reflect that combination. Do you have  
5 any problems in trying to come up with a document which  
6 combines these two thrusts?

7 MS. MARTIN: Yes, Your Honor. I think that we would  
8 propose a supplemental stipulated order that would combine  
9 the two, the water and wastewater.

10 THE COURT: You submitted that, didn't you?

11 MS. MARTIN: I submitted that very recently to EPA and  
12 DOJ and also to Mr. Henifin.

13 THE COURT: All right. Now --

14 MS. MARTIN: Very recently, EPA and DOJ and MDEQ.

15 THE COURT: Well, then I want to -- before I hear from  
16 the other side again, I want to have you react to this  
17 observation that I've made. In your submission you asked  
18 that Mr. Henifin be made a party along with the, what is  
19 that, MDEQ or somebody?

20 MS. MARTIN: Okay. Yes. The confidentiality  
21 agreement, we have asked that he be bound by that  
22 confidentiality agreement, and it's a confidentiality  
23 agreement that existed before Mr. Henifin joined in this  
24 case. So it already existed in that case before he joined  
25 it.

1 THE COURT: Now, I don't have a problem in making him a  
2 part of the confidentiality requirement. However, I do have  
3 some concerns about making him a party, because as someone  
4 who works directly for the Court on this issue, I confer  
5 with him on a regular basis. And if he is a party, I don't  
6 want that construed as a conversation outside of the  
7 attention of everybody else. And so, therefore, I don't  
8 want him as a party in that respect, but he can be bound by  
9 the confidentiality matter. Do you have a problem with  
10 that?

11 MS. MARTIN: No, Your Honor. No, we don't have an  
12 issue with him not being a party.

13 THE COURT: Does anybody have an issue with that?  
14 Because that language in that stipulation would have to be  
15 changed in that respect, because he then would not be a  
16 party who would be bound by rules that govern ex parte  
17 conversations with the Court as a party.

18 So since he deals with me all the time, and under the  
19 documents I've been laboring under thus far, he is able to  
20 do that, and we have done that on a regular basis where I've  
21 been kept up to snuff on everything that's been going on and  
22 also have an idea as to where we are going. So I don't want  
23 him restricted in that respect. Anybody have a problem with  
24 that?

25 MR. FINGERHOOD: Your Honor, Karl Fingerhood on behalf



1 of the Department of Justice.

2 I think we would be fine. Mr. Henifin is an officer of  
3 the court under the third-party order, and so if Your Honor  
4 wishes to change the language to reflect that, I think that  
5 may address the concern.

6 THE COURT: Okay. Thank you so much.

7 Ms. Martin, thank you for -- are you finished?

8 MS. MARTIN: That's all I had, Your Honor.

9 THE COURT: All right. Thank you so much.

10 Now, then, you had stood earlier because you have  
11 something you want to add. Go right ahead. Add.

12 MR. FINGERHOOD: Well, I do, Your Honor. As you were  
13 indicating, you have been having some conversations with  
14 Mr. Henifin. We haven't had the same level of conversations  
15 with him. As you know, I am an attorney for the Department  
16 of Justice. I don't have, you know, final say on things.  
17 And my client, EPA, has to weigh in, and also MDEQ. So we  
18 do look forward to meeting with Mr. Henifin in the near  
19 future and discussing a lot of the items that he raised  
20 today, and we do have a confidentiality order, because we  
21 like to have open and frank discussions, and a lot of the  
22 people involved, the engineers, myself, we're not the  
23 ultimate decision-makers. So we would like to have the  
24 final decisions made by those decision-makers.

25 We -- some of the things that were discussed -- I did

1 just want to briefly mention on the grant side, in the  
2 status report there's, I think, acknowledgment that there  
3 are certain Congressional laws that dictate how the money  
4 can be used, and I think the third-party manager is looking  
5 into having a legislative fix. But without, you know,  
6 Congress changing the law, you know, we have to follow the  
7 law as it is written. So we will have to have some further  
8 discussions on that.

9 I know he also mentioned debt retirement. While I'm  
10 not weighing in one way or the other, another consideration  
11 is rather than spending the money on debt retirement, can  
12 that money be used right away for quick fixes? So that's a  
13 financial, you know, type of decision that, you know, we'll  
14 want to discuss with him and get more on his thinking on  
15 that and, you know, have our financial experts weigh in.  
16 But it is just another consideration that is out there.

17 And that is all I had to add at this time, Your Honor.

18 THE COURT: All right. Thank you so much.

19 Two things. One, I would like all of the parties to  
20 try and get together to see if you can come up with a  
21 stipulation as to how we can combine sewage and water. And  
22 try to have that for me in the next two weeks so that I can  
23 look it over and see if it passes muster over this  
24 direction, because we would like to have these documents  
25 handy so that we'll know what we can do in this regard with

1 both those matters, and also with regard to Mr. Henifin's  
2 involvement and direction on these matters, because earlier  
3 when I asked whether anyone disagreed with his being the  
4 lead person on the sewage as he has been on the water, I saw  
5 no objection to that.

6 So I need to have whatever, then, you can submit on  
7 that matter, and I would hope that there are some agreements  
8 on it, because there is supposed to be a stipulation. And  
9 so we can get all of that and move from there.

10 Ms. Martin?

11 MS. MARTIN: Your Honor, just a point of clarification.  
12 You've mentioned that you wanted us to bring something to  
13 you in two weeks. My question is whether or not you want us  
14 to submit a proposal that we have all negotiated or if you  
15 want us to take a proposal -- we would have to take -- we,  
16 the City of Jackson, if we're going to enter into a  
17 stipulated agreement like we did previously, we would have  
18 to take that to the city council. Do you want us to try and  
19 iron something out in the next two weeks that we take to the  
20 city council? Or do you want us just to iron out an  
21 agreement and bring it directly to you?

22 THE COURT: Why don't you go ahead and iron out as best  
23 you can what you intend to submit to the city council so at  
24 least we can look at that preliminarily and have some idea  
25 whether that's even agreeable to us. Otherwise you might

1 not even go to city council, because we might not agree with  
2 it.

3 MS. MARTIN: Thank you, Your Honor.

4 THE COURT: Or will that be okay? Okay?

5 Yes?

6 MR. FINGERHOOD: Your Honor, Karl Fingerhood,  
7 Department of Justice.

8 Just to clarify, as you know, the Safe Drinking Water  
9 Act case was an emergency. That took us three months to  
10 negotiate that document, which I think is a world record.  
11 And I just want to clarify, I think we could probably have a  
12 stipulation as far as how we're going to proceed with the  
13 discussions.

14 But a finalized document, as I mentioned, there is all  
15 kinds of decision-makers that would have to be involved in  
16 any type of final document. And so I just want to clarify  
17 that that's not what the Court is asking for. You want a  
18 document that will kind of set forth the procedure for  
19 moving forward?

20 THE COURT: As you know, what concerns me primarily is  
21 that every day that we do nothing, we have sewage bubbling  
22 up. We have the potential for other water problems if we  
23 don't address them, and every day that goes by, we run the  
24 risk of escalating our problems.

25 And we talked about this whole possibility that there

1 could be health concerns, and we don't want to see any of  
2 that. So to say that we're going to allow this matter to  
3 just fester for months means that we're not being as  
4 forthright as we could be. That is number one.

5 And number two, you all are experienced at this point.  
6 You all did the water thing, and even though you broke a  
7 record in doing it, but you did it. And since you have that  
8 as a guidepost, then I don't see why it would be so  
9 difficult to craft some measure so that we can start getting  
10 work- -- so we can start getting moving on these matters and  
11 try to get some relief, especially in the sewage area,  
12 because what is the citizenry to do when they recognize that  
13 we have all these sewage issues cropping up and they are  
14 running this unimaginable risk of harm from infection they  
15 can't even see in the air?

16 So I am quite concerned of moving this thing forward as  
17 fast as we can go. And if we need to all come together and  
18 sit around the courtroom and try to hash out any problems  
19 that might crop up as opposed to allowing the matter to  
20 fester and we'll come back at it later when the parties have  
21 a chance to call each other and get together to discuss it,  
22 I don't mind calling a session for us to come to this  
23 courtroom and go paragraph by paragraph and see then if we  
24 can reach consensus.

25 So I am quite concerned about the impact all of this

1 has on our citizenry, and I think that we just owe it to  
2 them to do this as fast as possible. So if reach some major  
3 logjams, then I will call a session for us to get together  
4 and then use some template for an agreement and then go down  
5 paragraph by paragraph and to see what the objections are  
6 and go from there. And then with everyone having telephone  
7 capabilities to call their respective offices and to put  
8 them on notice of the time requirements for this thing, then  
9 those folks should be amenable to immediate contact.

10 Again, we need -- we cannot overlook the gravity of  
11 this matter. This is -- this is a matter of utmost gravity  
12 to talk about the possibility of the dangers and the hazards  
13 that are lurking out there ready to grip our citizenry at  
14 any moment, and right now we're talking about, as Ms. Martin  
15 said, 256 eruptions.

16 Well, we don't know how many we're going to have in the  
17 next two weeks. And then they would just simply increase,  
18 and meanwhile, the citizenry only have an outlet device of  
19 calling this one truck that would have to try and make its  
20 way over to its neighborhood to try and deal with it, and  
21 meanwhile, there are other neighborhoods with even worse  
22 problems.

23 So let's just see how far we can get. And if we cannot  
24 get it done then, like I said, I will call a conference, and  
25 we will use a template, and I'll just go -- I'll either

1 prepare it, Mr. Henifin will prepare it, or any one of you  
2 can prepare it, and then we'll simply go paragraph by  
3 paragraph to see where we are and what our disagreements are  
4 and what the items of friction might be. So I understand  
5 what you're telling me, but I don't want to be bogged down  
6 with the normal administrative logjam.

7 MR. FINGERHOOD: I understand, Your Honor.

8 THE COURT: Okay. Thank you much.

9 MR. FINGERHOOD: The only thing I have to say is, you  
10 know, Mr. Henifin is still running the drinking water  
11 system, which keeps him pretty busy. But as long as he can,  
12 you know, put in the time, we are looking forward to talking  
13 with him.

14 THE COURT: I have talked with him at length. As I  
15 said before, Mr. Henifin is the first one who suggested that  
16 these two cases should be put together. And that is why he  
17 added to that tour that we took the matter of sewage. That  
18 was his idea to add that. Because, you see, what I had  
19 asked is that we all solve the water problem. Well, once he  
20 gained a captive audience, and since he was the one talking  
21 to the bus driver, then instead of coming back this  
22 direction, he told her to go by Northside Drive, because he  
23 said there was something else he wanted me to see.

24 Well, I did not know the sewage problem was so dire,  
25 and then I did not know the entanglement of the sewage

1 problem with the water problem. I recognized when I was  
2 doing my reading on the water matters, I saw word "sewage"  
3 crop up here and there, but I still didn't understand until  
4 he took us out there to that -- that eruption how dire the  
5 problem was and, furthermore, how intertwined these problems  
6 were.

7 So he and I had long conversations about that, and then  
8 thereafter, then I asked Judge Lee if he was amenable to a  
9 discussion on the matter, and then I went by his office to  
10 talk to him about this, and immediately after I described  
11 all these things, armed with the information that  
12 Mr. Henifin had provided to me, Judge Lee readily recognized  
13 why these two matters should be intertwined.

14 And since the water case was more developed than the  
15 sewage matter, then he immediately said, then they should be  
16 under your tutelage and you do -- you go ahead and deal with  
17 both of them.

18 And therefore that's why I am, because I'm so farther  
19 progressed on the water matter than if I had combined the  
20 cases under his guidance when he has done nothing on the  
21 water side, but I have done something on the sewage side in  
22 connection with the water case, so I did have a thumbnail  
23 sketch on that.

24 And, in addition, I have a close working relationship  
25 with Mr. Henifin, who is such an expert on all this and



1 speaks so eloquently and decisively on these matters. And  
2 so I have already been dealing with him on a regular basis.

3 So I have burned up his cell phone from time to time to  
4 call to find out what's going on, where we are, and I want  
5 to throw some flowers at him. And not just flowers, but I  
6 want to throw a bed of roses at him for what he did on the  
7 waterfall problem. This was a problem that had been  
8 festering for some seven years.

9 Now, he then came in and attacked that matter and came  
10 in with the wonderful and great approach to dealing with  
11 that waterfall problem where we were losing 5, what, million  
12 gallons of water, treated water, per day for seven years,  
13 and he came in and came up with a solution that dealt with  
14 that timely so that now it's dry out there. The waterfall  
15 is gone, and he has dealt with that. That's a tremendous  
16 saving to our water system, and he came in, took his crew,  
17 and he went through that.

18 Now, when I saw that waterfall out there, I could not  
19 believe it, because next to the waterfall, as you all know,  
20 there was a small lake. And then there was a hole out there  
21 that was so deep that the workers couldn't find the bottom.  
22 They only had a 16-foot pole to shove down the hole to see  
23 how deep it was, and they ran out of pole because the hole  
24 was deeper than 16 feet of treated water next to what looked  
25 like a small lake, and then the waterfall cascading down,

1       you know.

2               So, anyway, he has done a herculean job on that and all  
3       the other matters. He reports to me all the time on what  
4       he's doing, and he has done a great job. And now we are  
5       waiting for when the first additions of the moneys are going  
6       to be provided, and I think you all were here at the last  
7       session I had when I went over with him as to what exactly  
8       all the dollars were going to be expended for, and --  
9       because it's not a matter of just simply saying we are going  
10      to take X number of dollars and spend it without any  
11      explanation.

12             My job is to oversee everything, and so -- and he is  
13      prepared, and so I had the hearing last time, and I asked  
14      all my line item questions about any and everything and gave  
15      all of you an opportunity to ask your questions also. And  
16      he is -- he has abundant answers to everything that's going  
17      on, because he's on top of it.

18             So anyway, Mr. Henifin, publicly I acknowledge my  
19      respect. Thank you so much.

20             MR. HENIFIN: Thank you so much.

21             THE COURT: All right. Now, Ms. Martin?

22             MS. MARTIN: Your Honor, I will just add, you mentioned  
23      the urgency of preparing a document.

24             THE COURT: That's right.

25             MS. MARTIN: The City of Jackson agrees. We have

1 actually already prepared a draft. I don't know if that --  
2 I think earlier when you were talking about the  
3 confidentiality order, I thought you were talking about the  
4 draft. We actually prepared a draft that follows along with  
5 the stipulated order that we did on drinking water. We have  
6 presented that to all parties, and we believe that we can  
7 get this done within the next two weeks.

8 THE COURT: Okay. Thank you. And I have seen that.  
9 But I was saying more about the confidentiality agreement  
10 because of my concern about making Mr. Henifin a party.

11 MS. MARTIN: Yes, Your Honor.

12 THE COURT: Yes, sir?

13 MR. FINGERHOOD: Your Honor, we just got that document  
14 I think either late last night or very early this morning.  
15 We have shared it with EPA. We've actually been working on  
16 our own document. I'm not sure if the document that the  
17 City worked on was shared with our coplaintiff, MDEQ, and  
18 they would need to weigh in, too.

19 But we do have our own document. I think, you know, we  
20 can get that to the City and MDEQ in short order, and, you  
21 know, it may be something to work off. So I would ask that  
22 everyone keep an open mind until they kind of see what we've  
23 been working on. And, you know, we can keep the discussions  
24 going from there.

25 THE COURT: Very helpful.

1           Finally, because of the gravity of this problem and  
2           because of the need to move swiftly on this matter, I am not  
3           antagonistic to holding a conference, as I said earlier, in  
4           the courtroom for us to go over a template. Perhaps it  
5           would be the City's that you submitted or somebody else's,  
6           but we can go over every line item there until we have an  
7           agreement to get that out before the public and so that we  
8           can start solving these dire problems.

9           I am not against staying here all day working on  
10          something. I am not against working on Saturday. I am not  
11          against working as long as we need to. In fact, this last  
12          week I was supposed to be in court on another matter, and in  
13          my order, I had said that we will move -- we will be in  
14          session on Friday and Saturday.

15          One of the attorneys said in this other case that at  
16          least you didn't say we had to come in on Sunday, and I  
17          responded that, you don't have to worry. I was not going to  
18          have you come in on Sunday at 8:30, 9:30. We have church  
19          time. But look out for 2:00 on Sunday. So then I figured  
20          you're out of church and then you're ready to spread your  
21          good cheer around and your agreements, and then we can move  
22          on it.

23          So on this one, the same way. I am not against staying  
24          as long as possible for us to do this as fast as possible,  
25          because I was just alarmed at seeing all of that raw sewage

1 sprouting out of the ground just so many yards away from a  
2 senior citizen home. I would be alarmed if it's near  
3 anybody's home, but to see that next to a senior citizen  
4 home just tickled a new chord. So we need to just make sure  
5 that we try and do the best we can as fast as we can.

6 Now, with that, is there anything else that any of you  
7 want to order -- want to add? Yes, ma'am?

8 MS. MARTIN: Your Honor, one last thing. We do need to  
9 extend the stay in the Safe Drinking Water Act case, the  
10 underlying case, because the stay expires I believe at the  
11 end of this month.

12 THE COURT: Okay.

13 MS. MARTIN: And so if it pleases you, we can just  
14 submit an order extending the stay.

15 THE COURT: Why don't you submit an order, copy  
16 everybody else, and if anybody has an objection, then let me  
17 know in due course in the normal order.

18 MS. MARTIN: Thank you, Your Honor.

19 THE COURT: Thank you so much. Anything else from  
20 anybody else?

21 MR. CALAMITA: Your Honor, if I may? Your Honor?

22 THE COURT: Yes. Who is this?

23 MR. CALAMITA: Paul Calamita on behalf of --

24 THE COURT: Okay. Ka-luh-my-ta or ka-luh-me-ta?

25 MR. CALAMITA: Ka-luh-me-ta.

1 THE COURT: Okay. How are you?

2 MR. CALAMITA: I'm doing well. Thank you, Your Honor.  
3 On behalf of Mr. Henifin, I would like to --

4 THE COURT: Now, you're breaking up on me.

5 MR. CALAMITA: I apologize. Can you hear me now?

6 THE COURT: Well, go ahead on. Let's see what we can  
7 do.

8 MR. CALAMITA: I would like to observe that we agreed  
9 that we need to move quickly, and the City's approach is an  
10 amendment to your supplement to your drinking water order.  
11 And we think that makes a lot of sense.

12 Number one, the parties have all approved that  
13 structure and many of the specific provisions.

14 Number two, it keeps Mr. Henifin from becoming a party  
15 to any document. An alternative would be a consent decree,  
16 and that might be difficult and cause Mr. Henifin to become  
17 a party.

18 Three, your order has some very important liability  
19 protections that we need to hold on to. So while we are  
20 open to other approaches, we think what the City has come up  
21 with is the most efficient and appropriate way to proceed,  
22 Your Honor.

23 THE COURT: Okay. Thank you very much.

24 Ms. Martin, that's a vote of confidence for your  
25 submission. Is that your partner?

1 MS. MARTIN: No, Your Honor.

2 THE COURT: All right. Well, finally, in the very near  
3 future, this Court is going to address the concerns of the  
4 public with regard to this, and the Court will have a  
5 procedure by which that is being done, and you will have  
6 further announcements on this as those details are worked  
7 out. But I won't say more about that at this time, but  
8 later on there will be another mechanism to try and get more  
9 information to the public on these particular matters.

10 Now, with that, I want to thank all of you for your  
11 patience, and I will check to see where we are in this after  
12 two weeks, to see then if you have been able to come up with  
13 some approach written-wise or whether the Court is going to  
14 have to call everybody together and try and iron it out in  
15 person.

16 So thank you very much. I'll be in contact.

17 (Court adjourned at 3:34 p.m.)

18 \*\*\*\*\*  
19  
20  
21  
22  
23  
24  
25

**COURT REPORTER'S CERTIFICATE**

I, Caroline Morgan, Official Court Reporter for the United States District Court for the Southern District of Mississippi, do hereby certify that the above and foregoing pages contain a full, true, and correct transcript of the proceedings had in the forenamed case at the time and place indicated, which proceedings were stenographically reported by me to the best of my skill and ability.

I further certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

THIS, the 18th day of May, 2023.

/s/ Caroline Morgan, CCR

Caroline Morgan CCR #1957  
Official Court Reporter  
United States District Court  
Caroline\_Morgan@mssd.uscourts.gov